

H2H3STES

Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 287 (LTS)

5 SEAN STEWART,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 February 17, 2017  
2:00 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 SARAH EDDY

BROOKE E. CUCINELLA

Assistant United States Attorneys

18 FEDERAL DEFENDERS OF NEW YORK

19 Attorneys for Defendant

20 MARTIN S. COHEN

21 ALSO PRESENT: Special Agent Eric Burns, FBI

H2H3STES

Sentence

1 THE DEPUTY CLERK: United States of America v.  
2 Stewart.

3 THE COURT: Counsel.

4 MS. EDDY: Good afternoon, your Honor. Sarah Eddy and  
5 Brooke Cucinella for the government. And with us at counsel  
6 table is Special Agent Eric Burns.

7 MS. CUCINELLA: Good afternoon, your Honor.

8 THE COURT: Good afternoon.

9 MR. COHEN: Good afternoon, your Honor. Martin Cohen  
10 from the Federal Defenders on behalf of Sean Stewart.

11 THE COURT: Good afternoon, Mr. Cohen. Good  
12 afternoon, Mr. Stewart.

13 THE DEFENDANT: Good afternoon.

14 THE COURT: And good afternoon to the family members  
15 and friends who are here. Thank you all for coming to court.  
16 And greetings to the other spectators who are here in court  
17 today.

18 We are here today for sentencing. I've received and  
19 reviewed the presentence investigation report, which is dated  
20 January 24, 2017, including the recommendation and addendum, as  
21 well as defense counsel's February 6, 2017 submission, which  
22 was accompanied by four letters of support, and the  
23 government's February 10, 2017 submission. I have received as  
24 well the defense further reply submission dated February 16,  
25 2017, and the government's February 16, 2017, sur-reply.

H2H3STES

Sentence

1 Are there any other written submissions that the  
2 parties intend me to have considered in connection with the  
3 sentencing?

4 MR. COHEN: No, your Honor.

5 MS. EDDY: No, thank you.

6 THE COURT: Thank you. Ms. Eddy, would you please  
7 make a statement regarding the government's view of the victim  
8 identification situation and status of any notifications in  
9 that regard.

10 MS. EDDY: Yes, your Honor. Victims have been  
11 notified, and as I think we noted in our sentencing submission,  
12 the government is in consultation with victims concerning  
13 potential restitution. As the Court I'm sure is aware, there  
14 is a 90-day period following sentencing during which  
15 restitution can be set. The government proposes that by a week  
16 from today we will advise the Court if in fact we are seeking  
17 restitution on behalf of any of the victims.

18 THE COURT: Does the defense have an objection to that  
19 structure?

20 MR. COHEN: No, your Honor.

21 THE COURT: Mr. Cohen, have you read the presentence  
22 report and discussed it with Mr. Stewart?

23 MR. COHEN: I have, your Honor. We have no objections  
24 to the presentence report, other than the ones that were made  
25 to the probation officer.

H2H3STES

Sentence

1 THE COURT: Thank you. And Mr. Stewart, have you  
2 yourself reviewed the presentence report?

3 THE DEFENDANT: Yes, I have, your Honor.

4 THE COURT: Have you discussed it with your attorneys?

5 THE DEFENDANT: I have, your Honor, yes.

6 THE COURT: All right. Mr. Cohen, did you wish to  
7 speak further to the defense objection to probation's use of  
8 the 1.6 million -- \$1.16 million gain amount in the guideline  
9 calculation in the PSR?

10 MR. COHEN: Very briefly, your Honor. We've set it  
11 forth in our letter to the Court. Our position is that it was  
12 not reasonably foreseeable to Sean Stewart that his father  
13 would engage Richard Cunniffe to either trade for him -- to  
14 trade for him in the manner that Cunniffe traded, whereby  
15 Cunniffe ended up making a million dollars based on the  
16 information that he gleaned from Robert, of which Robert  
17 Stewart got \$150,000.

18 We think that the appropriate benchmark since the  
19 Court can approximate gain is to look at the trading that  
20 Robert Stewart did on his own, which was the initial Kendle  
21 trade where he got roughly \$8,000. And we think of that as the  
22 type of trading that could have been reasonably foreseeable to  
23 Mr. Stewart that his father would engage in that. The loss  
24 amount should be \$40,000.

25 That's our argument, your Honor.

H2H3STES

Sentence

1 THE COURT: Thank you. Did you wish to speak further  
2 to your objection to the proposed enhancement for obstruction  
3 of justice?

4 MR. COHEN: So, your Honor, as we set forth in our  
5 letter --

6 THE COURT: Actually, this might make it a little  
7 easier. The Court does not consider the particular assertions  
8 that are cited in that letter material to the Court's  
9 determination as to whether the obstruction of justice  
10 enhancement should apply. So, we don't need a Fatico hearing  
11 on those assertions. If you want to make a more general  
12 argument.

13 MR. COHEN: Your Honor, I don't believe that the fact  
14 that Mr. Stewart testified on his own behalf and that the jury  
15 convicted him means that Mr. Stewart obstructed justice. The  
16 issue with the Court was Mr. Stewart's intent. He admitted to  
17 sharing information with his father and he was describing his  
18 state of mind at the time.

19 The jury convicted Mr. Stewart, but we don't know on  
20 what basis the jury rendered its decision. As the Court knows,  
21 one of the legal arguments that the government stressed in its  
22 rebuttal summation was conscious avoidance. The jury may  
23 easily have concluded that Mr. Stewart should have known what  
24 his father was doing based on having learned about the Kendle  
25 trades, and that, therefore, he must have intentionally done

H2H3STES

Sentence

1 it, which is not inconsistent at all with Mr. Stewart's  
2 testimony.

3 So, we don't think that the Court should take the  
4 jury's verdict as a finding that Mr. Stewart obstructed justice  
5 in this case. Thank you.

6 THE COURT: And did you wish to say anything about the  
7 proposed enhancement for use of the position of trust?

8 MR. COHEN: I just note, your Honor, that the  
9 probation officer didn't include it in the presentence report,  
10 in their recommendation, and we didn't comment on it there. So  
11 we take no position other than to side with the probation  
12 office.

13 THE COURT: Thank you. Ms. Eddy, do you wish to  
14 respond to the arguments?

15 MS. EDDY: Yes, your Honor. Addressing first the  
16 proper loss range. The guidelines calculation of 63 to 78  
17 months is pegged to a gain range of 550,000 to 1.5 million. I  
18 think everyone agrees that the total profits from these five  
19 deals, trading in advance of these five deals was about 1.16  
20 million.

21 These profits were plainly foreseeable to Sean  
22 Stewart. He may not have known that Richard Cunniffe in  
23 particular was his father's trading partner, we think the  
24 evidence establishes very clearly that he knew Robert Stewart  
25 had to be using somebody to help him to trade. And moreover,

H2H3STES

Sentence

1 these are tips on five separate mergers and acquisitions. It  
2 was plainly foreseeable that at least this amount of profit,  
3 1.16 million, would be generated from monetizing those tips.  
4 So, that's on the loss calculation.

5 With respect to the obstruction enhancement, we  
6 certainly believe it applies. Mr. Stewart perjured himself at  
7 trial on a matter plainly material to the case, his own state  
8 of mind. He testified falsely that he didn't believe his  
9 father would trade on the tips that he was giving him. And he  
10 testified further that he in good faith believed that his dad  
11 would not trade. He testified about this promise that was  
12 made. The jury had to have rejected that testimony in order to  
13 convict him.

14 So, and I think that in this regard, it's not correct  
15 that the jury could have convicted Mr. Stewart just based on  
16 its conclusion that he should have known that his father would  
17 trade. It had to have found that he deliberately turned his  
18 mind away from that trading under a conscious avoidance theory  
19 and he did not act in good faith.

20 So that's why those two enhancements apply. And we  
21 believe that the failure by the probation office to apply the  
22 abuse of trust enhancement was simply an oversight.

23 THE COURT: Thank you. Did the government have any  
24 other issues with respect to the report that you wanted to  
25 raise?

H2H3STES

Sentence

1 MS. EDDY: With respect to -- I'm sorry, I didn't  
2 hear.

3 THE COURT: The presentence report.

4 MS. EDDY: No, your Honor.

5 THE COURT: As to restitution, you're asking that  
6 pursuant to 3664(d)(5) we set a restitution hearing date 90  
7 days out and you're undertaking to give notice within a week as  
8 to whether restitution will be sought.

9 MS. EDDY: That's correct, your Honor.

10 THE COURT: Ms. Ng, may I have a restitution hearing  
11 date, please. Something a little shorter than 90 days.

12 THE DEPUTY CLERK: Thursday, May 18, 2017, at  
13 2:30 p.m.

14 THE COURT: So we'll set May 18 at 2:30 as the  
15 restitution hearing date and we'll look forward to the  
16 communication within a week.

17 What's the government's position as to forfeiture?

18 MS. EDDY: The government is not seeking forfeiture,  
19 your Honor.

20 THE COURT: Very well then. Since I have no evidence  
21 from which I can determine that there is a forfeiture  
22 obligation required, there will not be a forfeiture component  
23 of the sentence.

24 I will now rule on the three disputed guidelines  
25 issues. First, with respect to gains in connection with the



H2H3STES

Sentence

1 offense, the defense has objected to the computation of gain  
2 that puts the relevant gain in a bracket between 550,000 and  
3 one and a half million dollars, resulting in a 14-level  
4 increase in the offense level calculation for guidelines  
5 purposes.

6 Did I get those numbers wrong? I'm sorry, I thought I  
7 saw you indicating that I did.

8 The defendant contends that it was not reasonably  
9 foreseeable to him that his father would engage Richard  
10 Cunniffe to make trades because, among other things, the  
11 defendant had only ever communicated with Mr. Cunniffe for at  
12 most a minute or two. And defendant proffers \$40,000 as an  
13 appropriate benchmark for the gain computation, or, as a  
14 fallback, a maximum of \$150,000, approximating the amount of  
15 gains his father actually made.

16 The commentary to Section 2B1.4 of the guidelines  
17 concerning insider trading defines the relevant gain as the  
18 total increase in value received through trading and securities  
19 by the defendant and persons acting in concert with the  
20 defendant or to whom the defendant provided insider  
21 information.

22 The relevant conduct provision of the guidelines  
23 indicates that the defendant is responsible for the acts of  
24 co-conspirators that were reasonably foreseeable to the  
25 defendant. See Section 1B1.3(a)(1)(B) of the guidelines, and

H2H3STES

Sentence

1 also the Second Circuit's decision in United States v. Royer,  
2 549 F.3d 886, 905 (2d. Cir. 2008), holding that the loss  
3 resulting from acts of co-defendants can be attributed to the  
4 defendant for sentencing purposes if such acts were reasonably  
5 foreseeable.

6 Here, the credible trial evidence demonstrated that  
7 Mr. Stewart tipped his father Robert on the first Kendle deal  
8 with the expectation that his father would trade on the inside  
9 information. Robert then in fact traded on that information,  
10 and after his name appeared on a FINRA list, defendant at first  
11 did not identify the name in followup. There was elaborate  
12 lying to the JPMorgan lawyers about the involvement of Robert  
13 with the transaction. Ultimately, neither FINRA nor JPMorgan  
14 took action against Mr. Stewart.

15 Even after that inquiry, Mr. Stewart continued to tip  
16 his father concerning upcoming mergers, and Robert continued to  
17 trade based on the insider information, but under  
18 Mr. Cunniffe's name.

19 The credible evidence showed that Mr. Sean Stewart  
20 kept tipping his father in the expectation that his father  
21 would benefit. And given the fact that he continued to tip his  
22 father under those circumstances, with the expectation that his  
23 father would trade, but that he never again saw his father's  
24 name on a FINRA list, it would have been reasonably foreseeable  
25 to him that his father was trading using someone else's name

H2H3STES

Sentence

1 and account, and that such other persons would also be trading  
2 for their own account on the basis of the valuable insider  
3 information provided by Mr. Sean Stewart.

4 Furthermore, in this case, given the magnitude of the  
5 mergers as to which Mr. Stewart tipped inside information and  
6 the number of mergers involved, it should have been reasonably  
7 foreseeable to him that exploitation of such tips would lead to  
8 profits exceeding a half a million dollars.

9 Accordingly, the Court finds that the 14-point  
10 enhancement under Sections 2B 1.1(b)(1)(H) and 2B1.4(b)(1) of  
11 the guidelines is justified in light of the reasonable  
12 foreseeability to the defendant of the overall gains of Robert  
13 Stewart and others who would trade based on the tips conveyed  
14 by Robert.

15 As to the enhancement for the obstruction of justice,  
16 under 3C1.1 of the guidelines, as explained by the Second  
17 Circuit in United States v. Peña, 751 F.3d 101 (2d. Cir. 2014),  
18 an obstruction of justice enhancement for false sworn testimony  
19 is appropriate where the Court finds that the defendant  
20 willfully and materially committed perjury, which is defined as  
21 the intentional giving of false testimony as to a material  
22 matter.

23 Here, the jury clearly found beyond a reasonable doubt  
24 that Sean Stewart lied when he denied tipping his father in the  
25 expectation that his father would trade on the information.

H2H3STES

Sentence

1 This testimony went to a core element of the legal requirements  
2 for a criminal culpability. Mr. Stewart was keenly aware of  
3 the materiality of the issue, and testified as he did in a  
4 willful attempt to avoid conviction.

5 The Court finds that Mr. Stewart willfully and  
6 materially perjured himself at the trial when, among other  
7 things, he denied that he gave material, non-public information  
8 to his father with the expectation that his father would trade  
9 based on that information.

10 Accordingly, the additional two-point enhancement for  
11 obstruction of justice is warranted.

12 Finally, as to the enhancement for abuse of a position  
13 of trust, under Section 3B1.3 of the guidelines, a two-level  
14 enhancement is warranted if the defendant abused a position of  
15 public or private trust or used a special skill in a manner  
16 that significantly facilitated the commission or concealment of  
17 the offense.

18 Here, as Mr. Stewart admitted at trial, he repeatedly  
19 breached his duties of trust and confidence owed to his clients  
20 and employers when he disclosed material, non-public  
21 information about the Kendle and other mergers to his father.  
22 Accordingly, the two-level enhancement is warranted.

23 I will therefore direct the probation department to  
24 make the following changes to the presentence report: As to  
25 paragraph 159, the adjustment for role in the offense should be

H2H3STES

Sentence

1 two instead of zero, reflecting a two-point enhancement under  
2 guideline section 3B1.1(3) for abuse of a position of trust.

3 In paragraph 160, the obstruction of justice  
4 enhancement should be two instead of zero reflecting the  
5 two-point enhancement under section 3C1.1 of the guidelines.

6 The total offense level, therefore, should be 26  
7 instead of 22. And that change has to go in paragraph 164.

8 In paragraph 203, the total offense level should be  
9 changed from 22 to 26, and the guideline imprisonment range  
10 reflected as 63 to 78 months of imprisonment.

11 Are there any other changes in the PSR that I should  
12 make that I haven't cataloged here?

13 MR. COHEN: I don't believe so, your Honor. I think  
14 that our objections as stated preserve that objection, but to  
15 the extent they don't, we object to the Court's determination  
16 of the loss amount and the obstruction of justice enhancements.  
17 Thank you.

18 THE COURT: So at this point I would invite counsel to  
19 speak further to sentencing issues. Mr. Cohen.

20 MR. COHEN: Thank you very much, your Honor.

21 I wanted to start by letting the Court know who is  
22 here on Mr. Stewart's behalf. They include Mr. Stewart's  
23 mother, Claudia Stewart, his brother Ryan and Ryan's wife,  
24 Marissa, as well as Mr. Stewart's wife Elizabeth Stewart. All  
25 of whom or most of whom have written to the Court.

H2H3STES

Sentence

1           Nothing in our submission to the Court or in my  
2 remarks today should be taken as a suggestion that insider  
3 trading is not a very serious offense.

4           At the same time, it is not required for the Court to  
5 impose extensive incarceration just to signal the fact that it  
6 is a serious offense, and I want to focus the Court on the  
7 reasons for incarcerating people and the purposes of  
8 sentencing.

9           The Court has reviewed our submission carefully I  
10 know, and we believe that the appropriate sentence is a  
11 non-incarcerative sentence. My sense, though, is that the  
12 Court is going to impose some term of incarceration. If I'm  
13 wrong, the Court will correct me later on. But I want to focus  
14 the Court on why a term of a year and a day will be sufficient  
15 in these circumstances.

16           This case, I believe, is unusual for a lot of  
17 different reasons, but if the Court focuses on the nature of  
18 this offense, taking for the purposes of the argument the some  
19 of the government's theory, the government's theory was that  
20 Sean Stewart tipped his father because his father was  
21 struggling economically and Mr. Stewart made a very misguided  
22 and terrible decision to try and help him by providing inside  
23 information. Serious offense for sure, but it's not of a kind  
24 that warrants the type of extensive incarceration that the  
25 government is seeking here.

H2H3STES

Sentence

1 I take the Court's point in terms of what the  
2 guidelines are and what is reasonably foreseeable. But, it is  
3 important that the facts of this case is very unusual. You  
4 have Mr. Stewart tipping his father, his father then tipping  
5 someone that Mr. Stewart doesn't know. That third party made  
6 90 percent of the profits in this case, over or close to a  
7 million dollars, which drives much of the guideline range.  
8 Mr. Stewart received essentially nothing. His father received  
9 by the government's estimation \$150,000. Again, it's serious  
10 and we're not saying it is not, but it is not of a kind that  
11 warrants excessive or extensive incarceration.

12 In doing so, Mr. Stewart has destroyed his life. This  
13 is someone who has worked extraordinarily hard, worked very  
14 hard for these same companies whose trust he betrayed. Worked  
15 very hard for his family, for himself.

16 I think it came across at trial, I hope it came across  
17 from our letter, that this was more than Mr. Stewart's job in  
18 many ways. This was a core of his identity, was doing the work  
19 that he was doing, as well as along with his relationship to  
20 his family.

21 And by committing this offense, he's blown all of that  
22 up. His fault for sure, but that doesn't mean that the Court  
23 can't take that into account, and can't look at where  
24 Mr. Stewart is now in terms of fashioning an appropriate  
25 sentence here.

H2H3STES

Sentence

1           Mr. Stewart does not need to be specifically deterred.  
2       This prosecution has been an absolutely searing experience for  
3       him, and he'll have a lifetime of trying to make amends for his  
4       actions.

5           I do want to focus the Court a bit on the idea of  
6       general deterrence, which the government sometimes focuses on  
7       in terms of asking for additional incarceration. It is a  
8       somewhat abstract construct. Nobody knows for certain what  
9       length of time is required for purposes of general deterrence.  
10      But there is no empirical evidence in support of the  
11      government's position that extensive incarceration is required.  
12      Indeed, the evidence is to the contrary, which is that it is a  
13      certainty of prosecution, rather than the length of prison,  
14      that deters others.

15           In my letter to the Court yesterday, I quoted from  
16      Judge Rakoff's decisions in Gupta where he notes that common  
17      sense suggests that general deterrence in these type of cases  
18      can be satisfied by a somewhat modest sentence, because the  
19      people who it addresses are generally thought to be more  
20      rational actors.

21           Sean Stewart's case in particular, your Honor, was  
22      almost -- if the government wanted to find sort of an object  
23      lesson on this particular point, which is what a person says to  
24      those people who he's closest to about the work that he's  
25      doing, they couldn't have found a better vehicle. The case was



H2H3STES

Sentence

1 extensively covered in the newspapers. I can represent to the  
2 Court, anecdotal of course, but we were told by many folks that  
3 this was in all of the financial firms, the law firms where  
4 people are engaged in mergers and acquisitions, the investment  
5 bankers, the traders, everybody was watching this case. And  
6 not just because it was a first post-Newman case, but  
7 specifically, because this case involved somebody who shared  
8 confidential information with somebody who they loved and that  
9 person traded on it and his defense was that he didn't  
10 anticipate that that person would trade.

11 This prosecution alone in our view provides sufficient  
12 general deterrence. But if the Court finds, as I expect it  
13 will, that some additional incarceration is required, it should  
14 be a modest term of incarceration, and a year in prison will be  
15 sufficient.

16 The most compelling reason for incarcerating someone  
17 for a significant length of time is to incapacitate that  
18 person, and there is no need that Mr. Stewart should be  
19 incarcerated in order to incapacitate him. Indeed, the  
20 contrary is true. Mr. Stewart has a lot to offer his family  
21 and his community, all of whom will benefit from him being out  
22 in the community with his family, with his son, with his  
23 mother.

24 Really, I think what the government is after is  
25 punishment. They want Sean Stewart to be punished. But, the

H2H3STES

Sentence

1 Court can achieve that goal, can well achieve that goal without  
2 imposing a very long prison term.

3 The government tends to ask Courts to disregard  
4 collateral consequences of a person's conduct. There is no  
5 question these consequences are Mr. Stewart's fault. It  
6 doesn't mean, though, that the Court can't consider the fact  
7 that Mr. Stewart will almost certainly never work again in the  
8 career that he's worked so hard to get himself to. Almost  
9 certainly will never work again in the finance industry. Very  
10 unclear what position he will be able to get with these  
11 convictions on his record. And these are lifelong  
12 disabilities. His ability to earn a living will be forever  
13 diminished. There's all of the shame and stigma that goes  
14 along with it.

15 So, I think it's wrong to say that the Court need just  
16 put these things aside because they're collateral in some way  
17 to a sentence.

18 This prosecution, your Honor, was particularly  
19 punitive, not through any decision of Mr. Stewart, but it was  
20 our decision, his legal team, that we needed to explore in  
21 great detail the relationship between Sean and Robert Stewart.  
22 This trial, in open court, we shared extraordinarily intimate  
23 details, many of which weren't flattering to Mr. Stewart about  
24 his marriage, about his relationship with his parents, brutal  
25 exchanges between Sean and Robert Stewart. We did this because

H2H3STES

Sentence

1 we thought it was essential to show what that relationship was.  
2 But there are few criminal trials where somebody is exposed to  
3 the public the way that Mr. Stewart was. And that in itself,  
4 your Honor, was quite punishing.

5 If the Court imposes a sentence of a year and a day,  
6 Mr. Stewart will be removed from his family. He'll be removed  
7 from his incredibly important role as being a supporter of his  
8 son. He'll think of punishment in terms of the time away from  
9 his young son.

10 The government is right in saying, to an extent, in  
11 saying that the fact that Mr. Stewart has a close family or a  
12 loving family is not extraordinary. That many defendants have  
13 very close relationships with those that they love and  
14 responsibilities towards them.

15 At the same time, your Honor, the 3553(a) factors  
16 don't talk about extraordinary. They talk about looking at a  
17 person's background and their characteristics and the  
18 circumstances of their life. And if there is a sentence that  
19 the Court can impose that will return Mr. Stewart to his son  
20 sooner rather than later, the Court should impose that and can  
21 take that into consideration.

22 The Court could, for example, increase, if it thought  
23 it was necessary, the punishment by adding a term of home  
24 detention on top of a brief term or modest term of  
25 incarceration, which would further punish Mr. Stewart, but

H2H3STES

Sentence

1 return him to his family.

2 We don't have a crystal ball in terms of being able to  
3 see the future, but hard pressed to see why the future would be  
4 better for anyone, for this Court, for society more generally,  
5 for the financial markets, if Mr. Stewart was incarcerated for  
6 longer than a year and a day, than not. The marginal increase  
7 in terms of any of those things does not warrant additional  
8 incarceration.

9 The Court I know has read our letter. Before the  
10 Court is a young man who does have some extraordinarily good  
11 qualities and the ability and the wherewithal to use those  
12 qualities to help others, as he has in the past and as he will  
13 in the future.

14 He's going to be starting from scratch when he is  
15 released from prison. We urge the Court to make that sooner,  
16 rather than later. A year and a day is in line with other  
17 sentences that courts have given.

18 Obviously, every case is different and there are a lot  
19 of different nuances. I just want to very briefly point out  
20 the government put in a suggestion that the closest analogous  
21 case was the Riley case which Ms. Eddy was a prosecutor on. I  
22 would point out in that case, the defendant tipped his close  
23 friend who was an advisor to hedge funds and mutual funds.  
24 Those funds made \$36 million in profit. The person who got the  
25 tip got over a million dollars in bonuses.

H2H3STES

Sentence

1 I do think the focus here should be on Mr. Stewart,  
2 that are always different things in the cases, but I did want  
3 to make sure that the Court was aware of that in connection  
4 with that specific case.

5 The Court has letters from Mr. Stewart's family, has a  
6 sense for how the closeness of that family, despite this case  
7 and the things that Mr. Stewart has done. For these reasons  
8 and those set forth in the my letter, I urge the Court to  
9 sentence Mr. Stewart to a term of probation. But if the Court  
10 finds that some incarceration is required, that that  
11 incarceration be a term of one year and one day in prison.

12 Thank you, your Honor.

13 THE COURT: Before you sit down, I have a question for  
14 you.

15 MR. COHEN: Of course.

16 THE COURT: And obviously it's up to you whether and  
17 how you respond to it. But I noticed in the presentence report  
18 in the financial section that the current income and  
19 expenditures are far out of balance, and there is a fair amount  
20 being spent for housing, and the explanation of income doesn't  
21 match up and there is also some high debt.

22 So, to be honest with you, I have a concern that this  
23 is a person who's continuing to live beyond his means and not  
24 being realistic about the nature and impact of what happened in  
25 the past and its implications for the future. So if there is a

H2H3STES

Sentence

1 way for you to help me understand that in a different light,  
2 I'd want to give you the opportunity to do that.

3 MR. COHEN: Thank you, your Honor. Just give me a  
4 second.

5 So, your Honor, I think Mr. Stewart has been helped  
6 out by family members to a large extent. In addition, he and  
7 his wife decided that -- they don't live together as we set  
8 forth in our letter. Mr. Stewart has been the key caretaker,  
9 daily caretaker for their son, and so they decided that during  
10 this period that he would to minimize the chaos for William,  
11 that he would stay in that place. But both apparently  
12 Mrs. Stewart is going to be moving, Mr. Stewart obviously will  
13 be leaving that apartment. The main expense is the rent of his  
14 apartment.

15 As we noted as well, Mr. Stewart was recently hired to  
16 work this spring as a coach of a girls crew team at a private  
17 school, which will assist with those expenses, and certainly  
18 shows somebody who is working very hard to minimize their  
19 expenses and make what they can. As the Court can imagine, it  
20 was difficult for Mr. Stewart to find work.

21 So I take the Court's point in terms of the imbalance.  
22 I don't think it is at all a reflection of somebody who hasn't  
23 taken this case extraordinarily seriously.

24 THE COURT: Thank you.

25 MR. COHEN: You're welcome.

H2H3STES

Sentence

1 THE COURT: Ms. Eddy.

2 MS. EDDY: Thanks, your Honor. The Court has pretty  
3 extensive briefing from the parties, so I'm going to try to  
4 keep this brief. The government believes that a guideline  
5 sentence is warranted here. And I'd like to begin with the  
6 nature and the circumstances of the offense.

7 The defendant tipped his father about five separate  
8 mergers and acquisitions over roughly a four-year period. And  
9 he did so in gross breach of the trust placed in him, not just  
10 by his employers, but by his clients.

11 He got almost got caught early on in 2011 when the  
12 Kendle FINRA list circulated with his father's name on it, but  
13 that did not stop him. Instead, he cooked up an elaborate lie,  
14 he got himself off the hook, and he kept tipping his father.  
15 He kept egging his father on to exploit those tips for profit.  
16 He emphasized to his father that these were essentially sure  
17 bets handed up on a silver platter. So this was protracted and  
18 brazen conduct, propped up by lies. It's not a situation where  
19 we've got a blip or an aberration in someone's record.

20 This crime was to Sean Stewart essentially a costless  
21 way for him to benefit his father.

22 So we think the nature and the circumstances of the  
23 offense weigh heavily in favor of a guideline sentence here.

24 Turning to the history and the characteristics of the  
25 defendant, this, too, weighs heavily in favor of a substantial

H2H3STES

Sentence

1 prison term within the guidelines. Mr. Stewart's history and  
2 characteristics are reflected in the protracted nature of this  
3 crime and the calculated lies that he cooked up to continue the  
4 crime and cover his tracks. They're reflected in his false  
5 testimony to the Court and the jury. They're reflected in his  
6 decision during the pretrial period to spend the bond security  
7 that he had promised to keep inviolate.

8 So, with the seriousness of the conduct that's at the  
9 heart of the offense, and the defendant's lies and his other  
10 bad conduct, both during the commission of the offense and  
11 afterward, a guideline sentence is warranted.

12 I do want to address some of the goals of sentencing,  
13 particularly the ones that Mr. Cohen has touched upon.

14 First, with respect to general deterrence, white  
15 collar criminals often view crime in a sophisticated manner.  
16 They measure the risk against the potential reward. And  
17 insider trading is pernicious in part because the rewards are  
18 so sure and so instant. Unless the consequences of taking that  
19 kind of risk, breaking the law in that way, are very heavy,  
20 then general deterrence just won't be furthered.

21 With respect to specific deterrence, this again is a  
22 defendant who nearly got caught, but that did not stop him. In  
23 fact, he kept chiding his father to keep on exploiting these  
24 tips, even after the SEC had called Bob Stewart about the  
25 Kendle trading. And as we noted, although the defendant does



H2H3STES

Sentence

1 not currently have employment in the financial sector, he  
2 reports to probation that he is actively trying to find a job,  
3 he's in talks with a private equity firm and a private  
4 financial services firm.

5 And just a finally a small point regarding this  
6 question of comparable cases. The David Riley case, we do  
7 think it is comparable in some respects. Mr. Cohen has pointed  
8 out that the loss amount there was in the tens of millions of  
9 dollars. That's certainly true. Though the government  
10 conceded and the Court found there that that amount was not  
11 actually the correct amount to use for guidelines purposes  
12 there because it was so out of proportion with what the  
13 defendant anticipated reasonably would occur.

14 So, this case we think really is one that merits a  
15 guideline sentence between 63 and 78 months.

16 THE COURT: Thank you. Mr. Stewart, would you like --  
17 I'm sorry. Ms. Cucinella, would you like to speak?

18 MS. CUCINELLA: No.

19 THE COURT: Okay. I thought --

20 MS. CUCINELLA: I was just moving my chair, sorry.

21 THE COURT: Mr. Stewart, would you like to speak for  
22 yourself?

23 THE DEFENDANT: Yes, your Honor.

24 Your Honor, I want to begin by stating clearly that I  
25 understand it is my own actions that have led to me being here

H2H3STES

Sentence

1 today. My two former firms, I had a duty and a responsibility  
2 to my employers and to my clients to keep certain information  
3 confidential. I breached the trust and confidence that was  
4 placed in me. My actions have contributed to furthering the  
5 mistrust the public has in the financial markets, its  
6 institutions, and the government.

7 Speaking with my family about work violated the  
8 principles I very much cherished, respected, and was expected  
9 to maintain. So did failing to be honest with my first  
10 employer about the fact that I had breached the trust placed in  
11 me by sharing this information.

12 In my heart and in my mind, though, I know that I did  
13 not commit a crime. That is what I believe to be true.  
14 However, I know that I made very serious mistakes, and that's  
15 no one's fault but my own.

16 I want to talk to you today about what these mistakes  
17 have cost me and my family. In order to do that, I have to  
18 start in the summer of 2002 when I was fortunate enough to  
19 intern in the investment banking division at one of the largest  
20 banks in the world. At the time, few full-time jobs were being  
21 offered to interns, but after a summer of hard work, I received  
22 an offer for a permanent position to return after I graduated  
23 from school the following year.

24 The most enjoyable and memorable part of the entire  
25 summer was rushing home within hours of finding out and telling

H2H3STES

Sentence

1 my mom, who was so proud that she began to tear up. I remember  
2 and cherish that even more than the accomplishment itself, just  
3 sharing it with my family. I can't tell you if it was because  
4 I was driven by the need for affection, or simply the joy it  
5 gave me to make those I loved and trusted proud, but that is  
6 the man that I am.

7 Landing that first big job was just the beginning of a  
8 dream life and a career. From an early age, I looked up to  
9 commuters and those who worked in the big city. I worked as  
10 hard as possible to be part of that life.

11 Over the last 10 years, I've had the good fortune and  
12 opportunity to work with some of the most interesting and  
13 innovative companies in the world. At two wonderful firms I  
14 was lucky to work with some of the brightest, most driven  
15 people around. Former colleagues who are mentors, mentees, and  
16 many of them close friends.

17 For better or for worse, my profession was my life.  
18 It was how I defined and measured success. I had a wife I  
19 loved, a wonderful son, a caring family, and a career that had  
20 given me success, meaning, and fulfillment that words can't  
21 describe.

22 That living dream is now completely shattered.  
23 Because of my decisions, I have lost everything. My dream, my  
24 identity, the pride I had for my success and career is gone.  
25 Colleagues and friends with whom I traveled around the world no

H2H3STES

Sentence

1 longer acknowledge my existence. Clients with whom I shared  
2 some of the most personal and important moments will no longer  
3 speak to me. I have become a pariah in a world that I so  
4 cherished, admired and respected. I have to live with that and  
5 bear that burden and try to reconcile how I could have been so  
6 careless to have jeopardized a life that meant so much to me.  
7 I am hopeful that someday I can work to repair some of those  
8 relationships, but for now, they are destroyed. And I can't  
9 imagine that things will ever be the same.

10 My actions in the subsequent events have completely  
11 shattered my family. A family that was so close and loving and  
12 was the bedrock and foundation of my life. The once very close  
13 relationship I had with my father is absolutely destroyed. I  
14 don't know if it will ever be repaired. I will try to measure  
15 him by the love and sacrifice he has given our family.

16 My mom, who gave up her career and has spent her  
17 entire life raising me and my brother and caring for others,  
18 showing us unconditional support and love, has been utterly  
19 devastated by my actions. I know better than anyone how much  
20 pride my mom has in my success and how it's a reflection of her  
21 sacrifice and commitment. The impact this has had on her  
22 physical and mental health cannot be measured.

23 I have to live with that. Not a moment goes by when I  
24 don't anguish in these facts.

25 My ability to support my caring and loving brother for

H2H3STES

Sentence

1 whom I have served as a mentor and role model my entire life  
2 has been seriously weakened, as has my ability to serve as a  
3 godfather to his oldest son and uncle to his two other  
4 beautiful children. Ryan has always looked up to me for  
5 guidance and inspiration. I don't think he will ever look at  
6 me in the same way again.

7 Finally, my actions have irreparably damaged Elizabeth  
8 and our young son William. The public nature of my actions,  
9 including the question about our wedding, one of the happiest  
10 days of our lives, has been extremely embarrassing for  
11 Elizabeth.

12 Furthermore, William, the sweetest, most precious son  
13 parents could ask for, is going to grow up knowing that this  
14 happened. Words can't describe the bond and love that we  
15 share. William is a reflection of his mom and dad: Sensitive,  
16 fun-loving, innocent, and kind. I can't begin to contemplate  
17 what impact this will have on him. It haunts me every single  
18 day.

19 Dealing with the events over the last two years I've  
20 often come back to a quote shared with me by a pastor. God  
21 places the heaviest burden on those who can carry its weight.  
22 My actions have left me damaged, humiliated, and forever  
23 changed. I hope and pray that I have the strength to persevere  
24 and carry on, but every day since my arrest I struggle with the  
25 feeling that I have been completely and utterly broken and that

H2H3STES

Sentence

1 everything that I hold dear -- my career, many of my  
2 friendships and my family -- are forever shattered.

3 Judge Swain, I stand before you today ashamed,  
4 humiliated, and embarrassed. I stand here filled with  
5 contrition. I regret my actions and will continue to do so  
6 every single day for the rest of my life. All I hope for is  
7 the opportunity to continue to be a loving father and a good  
8 person, and to try to move forward making better choices and  
9 having a positive impact on those around me with the  
10 hard-gained wisdom and experience that this entire process has  
11 bestowed upon me. Thank you, your Honor.

12 THE COURT: Thank you, Mr. Stewart. Ms. Ng, will you  
13 give Mr. Stewart a cup of water.

14 I'd ask everyone sit quietly for a few minutes while I  
15 reflect on what I've heard and read, and the final decision  
16 which I will then announce and explain.

17 (Pause)

18 THE COURT: Thank you for your patience.

19 I adopt the factual recitation set forth in the  
20 presentence report with the guideline computation adjustments  
21 that we've discussed on the record. This Court has discretion  
22 taking into account the applicable statutory provisions in  
23 exercising its power under Section 3553(a) of Title 18 to  
24 determine the particular sentence to be imposed in each  
25 particular case.

H2H3STES

Sentence

1           That statute requires the Court to consider a number  
2 of specific factors and sentencing goals, including the nature  
3 and circumstances of the offense, the defendant's history and  
4 characteristics, the need for the sentence imposed to reflect  
5 the seriousness of the offense, promote respect for the law,  
6 and to provide just punishment, deterrence, protection of the  
7 public, and attention to other correctional issues.

8           The Court must consider the types of sentences that  
9 are available, and the provisions of the sentencing guidelines,  
10 as well as the need to avoid unwarranted sentencing disparities  
11 among defendants with similar records who have been found  
12 guilty of similar conduct. Where restitution is an issue, the  
13 Court must also consider the need to provide restitution to  
14 victims.

15           The Court is required by law to impose a sentence that  
16 is sufficient, but not greater than necessary, to comply with  
17 the statutory sentencing purposes.

18           As to the sentencing guidelines, I conclude, for the  
19 reasons stated earlier, that the applicable guideline offense  
20 level is 26, and that the applicable criminal history category  
21 is I, for the reasons that are detailed in the presentence  
22 report.

23           Accordingly, the advisory guideline range for a  
24 custodian sentence is from 63 to 78 months of imprisonment. I  
25 have used the November 2016 edition of the guidelines manual in

H2H3STES

Sentence

1 making these determinations.

2 I've considered the question of whether there is an  
3 appropriate basis for a departure from this advisory range  
4 within the guidelines system, and I find no grounds warranting  
5 a departure within the guidelines system.

6 So, I have gone on to consider carefully the full  
7 range of statutory sentencing factors and goals under Section  
8 3553(a), and all of the facts that have been put before me in  
9 light of those factors and goals. I will speak to certain of  
10 the factors.

11 First, the nature and circumstances of the offense.  
12 Mr. Stewart was convicted in August 2017 after a jury trial of  
13 all of the charges in a nine-count indictment related to  
14 insider trading, and the securities of five publicly traded  
15 health care companies. On at least five separate occasions,  
16 and over the span of several years, Mr. Stewart tipped his  
17 father with insider information concerning upcoming public  
18 company transactions, anticipating that his father, Robert  
19 Stewart, would use that information to trade securities for  
20 profit.

21 He passed this information on to his father, knowing  
22 that it was both valuable and highly confidential, and in spite  
23 of his awareness that his employers forbade such breaches of  
24 trust and confidentiality. He knew that he potentially faced  
25 severe consequences if caught, and he repeatedly gave



H2H3STES

Sentence

1 information to his father anyway.

2 The first of the tips related to the acquisition of  
3 Kendle International, Inc., in which Mr. Stewart represented  
4 Kendle in negotiations toward the acquisition. Based on his  
5 tip regarding the acquisition, Robert Stewart purchased Kendle  
6 shares and made approximately \$9,290 in profits, some of which  
7 were used to pay expenses relating to Mr. Sean Stewart's  
8 July 2011 wedding.

9 Upon inquiry by lawyers at the defendant's former  
10 employer concerning his father's name on the FINRA list of  
11 Kendle traders, Mr. Stewart lied about having passed along the  
12 insider information. Neither his employer nor FINRA took any  
13 additional action against him.

14 After that inquiry, Mr. Stewart continued to pass  
15 insider information to his father on four other deals,  
16 expecting that his father would trade on the information. His  
17 father, in order to avoid being identified, passed the  
18 information to an associate of his, Richard Cunniffe, and  
19 Cunniffe made trades in his account for himself and on behalf  
20 of Robert based on the inside information passed along by Sean  
21 Stewart. As a result, Robert and Cunniffe reaped approximately  
22 \$1.16 million in ill-gotten gains from the scheme.

23 Although, as we have already discussed, those  
24 substantial gains were reasonably foreseeable to the defendant,  
25 the Court recognizes that it is likely that Mr. Sean Stewart

H2H3STES

Sentence

1 did not have actual knowledge of the precise magnitude of the  
2 gains, and also recognizes that Mr. Sean Stewart himself did  
3 not receive the bulk of the profits personally.

4           However, the conduct here was serious and prolonged.  
5 Mr. Sean Stewart occupied a position of trust and confidence  
6 with respect to his employers, his clients, and the public,  
7 which he repeatedly breached.

8           When he was confronted with the Kendle FINRA inquiry,  
9 he concocted an elaborate lie to avoid suffering any  
10 consequences. But more egregiously, even after near exposure  
11 by the Kendle FINRA inquiry, Mr. Stewart, rather than stopping  
12 his illegal conduct, continued to tip his father with insider  
13 information for several more years, demonstrating a disregard,  
14 and lack of respect, for the law.

15           Turning to his history and characteristics.  
16 Mr. Stewart had, by his own account, a great upbringing with  
17 loving and supportive parents. He is smart, hard working, and  
18 talented in both sports and academic activities. He was his  
19 high school valedictorian and he went on to graduate from Yale  
20 University. This was an impressive start that gave him much in  
21 terms of opportunities for success and for positive  
22 contributions to his family and his community.

23           He threw himself into work and the successful push for  
24 advancement at JPMorgan, which he joined as an analyst in 2003,  
25 and where he had risen to the rank of vice president in mergers

H2H3STES

Sentence

1 and acquisitions by the time he left the firm in 2011 to join  
2 Perella Weinberg Partners as a managing director.

3 As we all know, his career in investment banking has  
4 ended and it did not end well. That was defendant's fault.  
5 For even as he strove to excel in performing his job, he  
6 betrayed the core trust that these institutions and their  
7 clients had placed in him by disclosing highly confidential  
8 information about upcoming merger and acquisition transactions  
9 involving public companies with his father who traded on it.  
10 He also apparently shared such information with his wife, who  
11 is not accused of any involvement in illegal trading. This  
12 conduct appears to have been motivated by a desire to give his  
13 father, who spent extravagantly on family activities,  
14 additional resources. And also from a general attitude that  
15 even very serious rules that apply to everyone in his line of  
16 work did not apply to him in the same way.

17 He earned high salaries himself, which he appears to  
18 have dissipated quickly and not to have used to subsidize the  
19 family activities organized by his parents, passing on valuable  
20 inside information instead.

21 He chose personal convenience, appearances, and family  
22 benefit, over fulfilling his contractual and ethical duties to  
23 his employers and his clients.

24 He lied elaborately about his relationship with his  
25 father and his father's Kendle trading activity when the FINRA

H2H3STES

Sentence

1 investigation caught up with him, and then went on to commit  
2 and conceal repeated breaches of trust.

3 His sense of entitlement and license to put his own  
4 priorities before legal obligations led him to violate the  
5 conditions of his bail, even after he was indicted in this  
6 case. He took and spent, without ever seeking the approval of  
7 the Court, and apparently without telling his lawyer, the  
8 proceeds of a \$250,000 account that had been pledged as  
9 security for his pretrial release. He has paid a consequent  
10 heavy price for this breach of the Court's trust.

11 He appears to continue to live beyond his means in an  
12 expensive apartment that his disclosed cash flow cannot  
13 support, has significant credit card debt, and has spent down  
14 his retirement savings account. And the Court does credit the  
15 representation that this is intended to be a temporary  
16 arrangement, but it is still significant that the arrangements  
17 were undertaken in this way.

18 His personal history and characteristics are by no  
19 means all negative, however. As noted already, he has shown  
20 himself to be smart, dedicated, and capable of great success.  
21 He is clearly a bright spot in the hearts of his parents, and  
22 he has been an important mentor and friend to his brother. His  
23 priest speaks carefully of his own experience with their parish  
24 and of his knowledge of the family as a whole.

25 Mr. Stewart has a four-and-a-half-year-old child. His

H2H3STES

Sentence

1 wife, with whom he is in the process of a divorce, speaks very  
2 positively of Mr. Stewart's relationship with their son and the  
3 important role that Mr. Stewart plays in his son's life and in  
4 the life of his son's school. She is also candid about the  
5 degree to which Mr. Stewart's active participation in his son's  
6 care facilitates her own attention to the demands of her own  
7 high-powered legal career and to the mitigation of childcare  
8 costs. A custodial sentence will have a seriously disruptive  
9 impact on Mr. Stewart's relationship with his child and on the  
10 life balance arrangements this estranged couple has been able  
11 to work out over these past few difficult years.

12 That is tragic, but it is not unusual when a key  
13 family member makes deliberate decisions to commit serious  
14 violations of the law, and must face the consequences. Those  
15 consequences often have profound emotional impacts, and force  
16 severe changes in the nature and quality of day-to-day life for  
17 other family members who must adjust their own lives to fill in  
18 to take care of children and other vulnerable family members.  
19 It is part of the cost to families and to society of criminal  
20 behavior.

21 Over all, Mr. Stewart's personal history and  
22 characteristics show this Court a man who is clearly quite  
23 capable of being a positive contributor to his community and  
24 his society, if he chooses to do so, and if he decides to  
25 manage his self-interest in a less antisocial manner.

H2H3STES

Sentence

1           The career path that was so dear to him is now  
2 foreclosed to him, and he will have to reassess his skills,  
3 readjust his self-image, and rebuild his life.

4           The Court believes that he is truly remorseful that he  
5 has brought himself to this day, and that he is capable of  
6 making a positive and productive life, including as a loving  
7 parent, going forward after he has paid the price that is the  
8 consequence of his serious criminal behavior.

9           The Court finds that the needs for punishment of his  
10 outrageous conduct and for specific deterrence in this case  
11 justify a significant custodial sentence. The need to promote  
12 respect for the law in this case is also high, especially in  
13 consideration of the fact that Mr. Stewart has still been  
14 actively seeking to be reemployed in the financial services  
15 sector.

16           The Court also considers the need for general  
17 deterrence of insider trading crimes, which are hard to detect,  
18 and are often committed by sophisticated individuals in  
19 positions of trust. And in particular, the need for general  
20 deterrence with respect to the financial services industry in  
21 which the public trust has been eroding in relation years.

22           The Court also considers the need to avoid unwarranted  
23 sentencing disparities. The defense urges the Court to  
24 consider the sentence imposed on Robert, Mr. Stewart's father,  
25 as a benchmark in consideration of the sentence to be imposed

H2H3STES

Sentence

1 in this case. Robert was sentenced pursuant to a plea  
2 agreement, and importantly, at his sentencing, the Court  
3 credited the representations that Robert was the sole caretaker  
4 for Mrs. Stewart, who was reportedly in need of urgent and  
5 serious medical and personal care. But for that consideration,  
6 the Court stated at Robert's sentencing that Robert's  
7 deliberate and prolonged fraudulent conduct would warrant a  
8 custodial term of significant length.

9 Those unusual circumstances present at Robert's  
10 sentencing do not exist here, and therefore, a sentence of a  
11 significant custodial length would not constitute an  
12 unwarranted disparity from Robert's sentence.

13 The Court also finds, for the reasons outlined in the  
14 government's initial and sur-reply submissions, that a  
15 significant custodial sentence would not represent an  
16 unreasonable disparity compared with the sentences imposed on  
17 other defendants who have committed similar crimes under  
18 similar circumstances.

19 The Court nonetheless finds that the 63 to 78 month  
20 custodial sentence recommended by the guidelines for  
21 Mr. Stewart exceeds the sentence that is sufficient, but not  
22 greater than necessary, to address the statutory purposes of  
23 sentencing.

24 Mr. Stewart has already spent more than a year living  
25 under significantly restrictive conditions, and protection of

H2H3STES

Sentence

1 the public from further criminal activity on his part is a  
2 relatively negligible consideration, given that he is not  
3 likely to have future opportunities for access to inside  
4 information regarding public company transactions. And in any  
5 event, he should not be eager to take advantage of any that  
6 does come his way, given what has happened.

7 The key Section 3553(a) sentencing considerations in  
8 this case are, therefore, punishment of Mr. Stewart's very  
9 serious criminal conduct, promotion of respect for the law by  
10 Mr. Stewart and others, and general deterrence. These  
11 considerations demand a custodial sentence of significant  
12 length, and the Court rejects as insufficient the defense  
13 suggestions of a non-custodial sentence and of a sentence of a  
14 year and a day.

15 The government's suggestion of a within guidelines  
16 sentence is excessive, however. The guideline range, while  
17 calculated appropriately, is driven significantly by the amount  
18 of gains acquired by Mr. Cunniffe, whom Mr. Stewart met only  
19 once, and about whose involvement in the scheme he appears to  
20 have no specific information, and the gains appear to have been  
21 acquired to a significant degree through the leveraging of  
22 Mr. Cunniffe's own assets. The guideline range is thus  
23 somewhat serendipitous in relation to Mr. Stewart's personal  
24 culpability. It overstates the amount of custodial time  
25 necessary to punish Mr. Stewart, who also suffers punishment



H2H3STES

Sentence

1 through increasing strain and complication of his family  
2 relationships, separation from his son, and guilt and  
3 resentment complicating his relationships with others regarding  
4 the changes that will be necessary in the care and arrangements  
5 for his son, his inability to return to the career that he  
6 loved, and the need to repair disrupted family relationships  
7 and build a new professional life upon reentry.

8 He has also been forced to confront publicly in the  
9 context of this trial the reality and the impact on others of  
10 his conduct. He will have to reinvent himself and recalibrate  
11 his expectations and commitments to the reality of his  
12 post-conviction and post-incarceration life.

13 In light of all of these facts and considerations, the  
14 Court finds that a moderate variance from the advisory  
15 guideline range is necessary to formulate a sentence that is  
16 reasonable within the meaning of the law, sufficient, and no  
17 greater than necessary to address the statutory purposes of  
18 sentencing. I will now state the sentence that I intend to  
19 impose.

20 Mr. Stewart and Mr. Cohen, would you please stand.

21 Mr. Stewart, it is the judgment of this Court that you  
22 are to serve 36 months of imprisonment on each of your nine  
23 counts of conviction to run concurrently, and to be followed by  
24 three years of supervised release on each count.

25 The standard conditions of supervision one through 13

H2H3STES

Sentence

1 as detailed in the sentencing guidelines manual will apply.  
2 These will be written out specifically in the judgment that I  
3 sign. The probation department will explain them to you in  
4 detail at the appropriate time, and I'm certain that Mr. Cohen  
5 will have something to say to you about them as well.

6 You will also be subject to the following mandatory  
7 conditions:

8 You must not commit another federal, state or local  
9 crime. You must not illegally possess a controlled substance.  
10 You must not possess a firearm or destructive device. You must  
11 cooperate in the collection of DNA as directed by the  
12 authorities.

13 I will suspend the normal mandatory drug testing  
14 condition based on the probation office's determination, which  
15 I'm very happy to be able to adopt, that you pose a low risk of  
16 future substance abuse.

17 You must also meet the following special conditions:  
18 You must provide the probation officer with access to any  
19 requested financial information. To the extent there is a  
20 restitution obligation and installment payment obligations, you  
21 must not incur new credit charges or open additional lines of  
22 credit without the approval of the probation officer, unless  
23 you are in compliance with the installment payment schedule.

24 You must comply with the conditions of home detention  
25 for a period of one year, that is 12 months. During this time,

H2H3STES

Sentence

1 you must remain at your place of residence during curfew times  
2 prescribed by your probation officer with a view to permitting  
3 you to attend to childcare, searching for a job, and working.  
4 You must maintain a telephone at your place of residence  
5 without call forwarding, a modem, caller ID, call waiting, or  
6 portable cordless telephones for this period.

7 At the direction of your probation officer, you must  
8 wear an electronic monitoring device and follow electronic  
9 monitoring procedures specified by your probation officer.

10 The home detention will commence on a date to be  
11 determined by the probation officer, and you must pay the costs  
12 of home detention on a self-payment or co-payment basis as  
13 directed by the probation officer.

14 You must perform 200 hours of community service over  
15 the period of supervision as directed by the probation officer.

16 You must report to the nearest probation office within  
17 72 hours of release from custody, and you will be supervised by  
18 your district of residence.

19 The determination of a restitution obligation will be  
20 deferred to a restitution hearing scheduled to be held on  
21 May 18, 2017, at 2:30 in the afternoon. And by a week from  
22 today, which will be February 24, the government is to write a  
23 letter indicating whether it intends to seek restitution.

24 I will also require, Mr. Stewart, that you pay a fine  
25 in the amount of \$7,500. This obligation recognizes

H2H3STES

Sentence

1 appropriately the gravity of your offense.

2           While you are serving your prison term, if you are  
3 engaged in a bureau of prisons non-UNICOR or UNICOR grade 5  
4 work program, you must pay \$25 per quarter toward the criminal  
5 financial penalties. However, if you participate in the bureau  
6 of prisons UNICOR program as a grade 1 through 4, you must pay  
7 50 percent of your monthly UNICOR earnings toward the criminal  
8 financial penalties consistent with the bureau of prisons  
9 regulations at 28 CFR Section 545.11.

10           During your period of supervised release, you will  
11 make payments toward any remaining restitution and fine  
12 obligations by paying 10 percent of your gross monthly earned  
13 income toward those obligations as directed by the probation  
14 department, to commence within 30 days after judgment is  
15 entered. The collection of amounts remaining unpaid after you  
16 have completed supervised release will be administered by the  
17 United States attorney's office's collection unit. The  
18 government may use judgment collection mechanisms available  
19 under applicable law with respect to any remainder outstanding  
20 after the supervised release period has terminated, but the  
21 government is encouraged to engage in post-supervision period  
22 collection activities in a manner that is not inconsistent with  
23 the defendant's ability to provide reasonably for his own needs  
24 and those of his dependents.

25           I will waive the accrual of interest on the fine,

H2H3STES

Sentence

1 pursuant to Section 3612(f) of Title 18, in light of your  
2 overall financial condition and family obligations.

3 I will also order that you pay to the United States  
4 the mandatory special assessment in the total amount of \$900,  
5 which is \$100 for each of your felony counts of conviction, and  
6 that is payable immediately.

7 You must inform the probation department of any change  
8 in financial circumstances and notify the United States  
9 attorney for this district within 30 days of any change of  
10 mailing or residence address that occurs while any part of the  
11 restitution or special assessment remains unpaid.

12 I believe that this sentence, taken as a whole, is  
13 reasonable within the meaning of the law, sufficient,  
14 appropriate, and no greater than necessary to satisfy the  
15 statutory purposes of sentencing, which include punishment and  
16 deterrence.

17 Does either counsel know of any legal reason why the  
18 sentence should not be imposed as stated?

19 MS. EDDY: No, your Honor.

20 MR. COHEN: No, your Honor.

21 THE COURT: The sentence as stated is imposed.  
22 Mr. Cohen, do you wish to ask for any particular  
23 recommendations to the bureau of prisons?

24 MR. COHEN: Judge, I have a separate request that I  
25 wanted to make initially, which is that the Court allow

H2H3STES

Sentence

1 Mr. Stewart to remain out on bail pending appeal.

2 THE COURT: Let me advise him of his appeal rights  
3 first so we don't lose sight of that.

4 MR. COHEN: Sure.

5 THE COURT: Mr. Stewart, I must say something  
6 important to you about appeal rights. You have the right to  
7 appeal your conviction and your sentence. If you are unable to  
8 pay the cost of an appeal, you may apply for leave to appeal in  
9 forma pauperis.

10 At your request, the clerk of court will file a notice  
11 of appeal for you. Any notice of appeal must be filed within  
12 14 days of the judgment of conviction. So, make sure to speak  
13 with Mr. Cohen about this.

14 You can be seated again. And Mr. Cohen, you can  
15 continue.

16 MR. COHEN: Thank you very much, your Honor. As the  
17 Court knows, under Title 18, United States Code, Section  
18 3143(b)(1)(B), the standard for bail pending appeal is that a  
19 defendant is entitled to bail if he is not likely to flee or  
20 pose a danger to public safety, and the appeal is not for the  
21 purposes of delay, and raises a substantial question of law or  
22 fact likely to result in reversal or an order for a new trial.

23 Here, there is no question in connection with risk of  
24 flight or danger to the community, so the sole question for the  
25 Court is whether there is a substantial question of law or

H2H3STES

Sentence

1 fact.

2 The cases are clear, your Honor, that the standard is  
3 whether if the appellate court decides in favor of the  
4 defendant it's likely to result in reversal or an order for a  
5 new trial. In other words, the Court need not find that it  
6 erred. If that was the standard, no one would ever get bail  
7 pending appeal.

8 The seminal case is U.S. v. Randell, 761 F.2d 122  
9 (1985). In that case, the Second Circuit explained that before  
10 the Bail Reform Act, there was a presumption in favor of bail  
11 pending appeal. The Bail Reform Act reversed that presumption,  
12 because it was trying to read out frivolous appeals or appeals  
13 that were solely for the purpose of delay, but it's not for the  
14 purpose or for the willingness of the trial court to agree that  
15 it expected to be reversed on appeal.

16 So, again, the question is if it is a non-frivolous  
17 question, debatable questions that, if granted by or agreed to  
18 by the Second Circuit, would result in a reversal of an order  
19 for a new trial. There is a case --

20 THE COURT: So your representation is the standard is  
21 that as long as the argument is not frivolous, that there  
22 should be a stay pending appeal?

23 MR. COHEN: As long as the argument is debatable.  
24 There is a case on point. I can hand it up to the Court from  
25 Judge Koeltl.

H2H3STES

Sentence

1 THE COURT: What is the cite?

2 MR. COHEN: It's U.S. v. Rittweger. 2005 WL 3200901,  
3 I direct the Court to where I placed the flag. In this case,  
4 your Honor, this case involved two defendants who had moved for  
5 severance, and Judge Koeltl had found that there was no grounds  
6 for severance. Judge Koeltl writes "By finding that there is a  
7 substantial issue for appeal for the defendant, the Court does  
8 not find that the issue will ultimately succeed or that it has  
9 merit. For all the reasons explained in the Court's prior  
10 opinion, the Court has concluded that joinder was proper in  
11 this case and it fits comfortably within the standards set  
12 forth by the Court of Appeals. But as the Court of Appeals  
13 noted in Randell, release pending appeal is not conditioned  
14 upon a district court's finding that its own judgment is likely  
15 to be reversed on appeal. Rather, the defendants need only  
16 show that if a substantial question is determined favorably to  
17 the defendants on appeal, that decision is likely to result in  
18 reversal or an order for a new trial on all counts on which  
19 imprisonment has been imposed."

20 And here, your Honor, there are a number of  
21 substantial questions which include the admission of the  
22 so-called silver platter statement, the exclusion of Robert  
23 Stewart's post-arrest statement regarding the silver platter  
24 statement and regarding other hearsay statements that were  
25 admitted, whether Robert Stewart properly invoked his Fifth



H2H3STES

Sentence

1 Amendment rights, and whether the government should have been  
2 compelled to immunize Mr. Stewart.

3 We're not here to rehash those issues, which have been  
4 aired thoroughly, both in the trial and in the post-trial  
5 motions.

6 THE COURT: Let me ask you this.

7 MR. COHEN: Yes, your Honor.

8 THE COURT: Would even a decision in Mr. Stewart's  
9 favor on those issues --

10 MR. COHEN: Yes.

11 THE COURT: -- result in an order of reversal or an  
12 order for a new trial on all of the counts on which  
13 imprisonment has been imposed?

14 MR. COHEN: Your Honor, we believe that it would,  
15 because all of the counts involve the central question of what  
16 Mr. Stewart's intent was. And all of these issues go to the  
17 same question. We believe that Mr. Stewart was deprived of a  
18 fair trial because the jury only heard one side of the hearsay  
19 statements of Robert Stewart, and we were precluded from either  
20 calling Mr. Stewart or having admissible hearsay which  
21 contradicted those statements. So all of them are of a piece,  
22 and they all go to the central issue in the case. As the Court  
23 knows, those were the highlights of the government's case  
24 against Mr. Stewart. So, in our view, if the Court of Appeals  
25 agreed on any of those issues, it would be impossible to think

H2H3STES

Sentence

1 that it would be harmless error, and that a new trial would  
2 result.

3 So, for that reason, your Honor, we would request that  
4 the Court allow Mr. Stewart to remain out on bail pending  
5 appeal. Thank you.

6 THE COURT: Thank you. Ms. Eddy.

7 MS. EDDY: Your Honor, this is not a case in which the  
8 standard has been met for bail pending appeal. Mr. Cohen has  
9 essentially read out the requirement that a substantial  
10 question of law or fact be presented here by equating that with  
11 non-frivolous. It's not the same.

12 The substantial question has to be presented and the  
13 the issues that Mr. Cohen has previewed will be raised on  
14 appeal. The admission of the silver platter statement and  
15 other statements made on recordings of Robert Stewart, the  
16 question whether Mr. Stewart -- Robert Stewart validly invoked  
17 his Fifth Amendment rights, all of those are questions that  
18 were resolved definitively in the government's favor by the  
19 Court. They're not substantial questions that are likely to  
20 result in reversal if they are presented on appeal.

21 THE COURT: The request for a stay pending appeal is  
22 denied because I find that those questions are not substantial  
23 within the meaning of the standard.

24 MR. COHEN: Thank you, your Honor.

25 THE COURT: I will, however, afford Mr. Stewart the

H2H3STES

Sentence

1 opportunity for a delayed surrender.

2 MR. COHEN: Thank you, your Honor. That is our second  
3 request. So, just for the record, we object to the Court's  
4 denial of bail pending appeal.

5 In connection with the delay of surrender date, as we  
6 indicated in our -- normally the voluntary surrender date is  
7 usually roughly 60 days, 45 to 60 days.

8 THE COURT: My intention was to direct him to report  
9 to the designated facility on May 25 with the idea that that  
10 would take him past the Easter holidays and to the end of the  
11 child's school year, and also give the ability to wind up the  
12 apartment.

13 MR. COHEN: I appreciate that, your Honor. I would  
14 just ask that the Court add an additional -- it is a little  
15 less than two weeks, until June 6. The reason for that, your  
16 Honor, is that Mr. Stewart has gotten this job, your Honor, and  
17 the Hewitt season, which is he's going to be the coach of their  
18 crew team, ends on May 25 itself. So we would just ask for a  
19 slightly delayed surrender date of June 6, which is a little  
20 less than two weeks after that.

21 THE COURT: All right.

22 MR. COHEN: Thank you, your Honor. I do have two  
23 requests with designation.

24 THE COURT: Just one second. I just need to check.  
25 Go on.

H2H3STES

Sentence

1 MR. COHEN: Thank you very much, your Honor. I have  
2 two requests with respect to the recommendation of the bureau  
3 of prisons. The first is the recommendation that the bureau of  
4 prisons designate Mr. Stewart to the FCI Otisville Satellite  
5 Camp.

6 THE COURT: And I assume that is for maintenance of  
7 family ties?

8 MR. COHEN: That's correct, your Honor.

9 THE COURT: I will make that recommendation.

10 MR. COHEN: Thank you. And the second recommendation  
11 we would ask the Court to recommend to the bureau of prisons  
12 that Mr. Stewart be allowed to spend the maximum amount of time  
13 in a halfway house.

14 THE COURT: I will make that recommendation as well.

15 MR. COHEN: Thank you very much, your Honor. No other  
16 requests.

17 THE COURT: There are no underlying indictments here,  
18 are there, that have to be dismissed?

19 MS. EDDY: No, your Honor.

20 THE COURT: So did the government wish to be heard on  
21 anything before my concluding remarks?

22 MS. EDDY: Nothing from the government, your Honor.

23 THE COURT: All right. It's been a long afternoon.

24 Everyone, Mr. Stewart, has acknowledged that the crime  
25 of which you've been convicted is serious. The length of the

H2H3STES

Sentence

1 sentence that you received today reflects that. And you  
2 yourself have acknowledged that you made a series of very, very  
3 poor choices. And so, I urge you going forward to think hard  
4 about the potential consequences of your actions before you  
5 take them so that everything you do in your life going forward,  
6 while you await the sentence, while you serve it, and every day  
7 thereafter, will be the result of good, healthy, and honorable  
8 choices that reflect the honor that you should have for  
9 yourself as a human being, that I'm sure that you do, and that  
10 you have for your family and that you have for your community.

11 You are clearly, as I said a couple of times, very  
12 intelligent, very accomplished, you achieved significant and  
13 extraordinary personal success. And so, it is up to you now to  
14 take your current circumstances and apply to them your talents,  
15 your energy, your desire, in the light and lens of your love  
16 for your family, and make a strong new respectable life.

17 From reading the letters I've received, I know that  
18 you are very much loved. And it is up to you to be the kind of  
19 father of whom your son can always be proud. You can't undo  
20 the past, but you have absolute control over every day going  
21 forward. And so, find ways to be an encouragement and good  
22 example for him and for all of those who love you, even while  
23 you are in prison. And I know that they will do everything  
24 they can to encourage you.

25 I wish you and your family strength and courage in

H2H3STES

Sentence

1 this time, which will continue to be a very difficult.

2 When you are released, you'll have the guidance and  
3 support of the probation department in reestablishing your  
4 day-to-day life. It is not easy to live under supervision, but  
5 it is a court-ordered requirement, so you have no choice. But,  
6 more important than that, my colleagues in probation are really  
7 committed to helping people succeed and have resources that can  
8 be useful in that regard. So, I urge you to take the  
9 supervision requirements and the reporting requirements as  
10 building blocks in your new strong life.

11 I also have to caution you that you have to comply  
12 strictly with all of the conditions that I have set for your  
13 supervised release. If you are brought back before me for  
14 violating any of them, I may sentence you to another term of  
15 imprisonment, so please don't ever put me in a position of  
16 having to make a decision like that.

17 I know that you can succeed, and I thank you and your  
18 family for listening, and I thank you all for doing all that  
19 you can to encourage and uphold each other.

20 I will direct that a corrected copy of the presentence  
21 report be prepared for the bureau of prisons and the sentencing  
22 commission. All other copies of the report must remain  
23 appropriately confidential. If an appeal is taken, counsel on  
24 appeal are to be permitted access to the report.

25 I thank counsel for their work throughout this case.

H2H3STES

Sentence

1           Is there anything further that we need to take up  
2 together this afternoon?

3           MR. COHEN: Nothing from Mr. Stewart, your Honor.

4           MS. EDDY: Nothing from the government, your Honor.

5           THE COURT: Ms. Ng, are you preparing a paper that  
6 Mr. Stewart has to take to the probation department?

7           THE DEPUTY CLERK: Yes.

8           THE COURT: All right. Mr. Stewart, Ms. Ng will be  
9 giving you a summary and I'll need you to go to the probation  
10 department after we've adjourned, that's on the sixth floor, to  
11 commence the paperwork and I'm sure that Mr. Cohen will tell  
12 you exactly where you need to go.

13          So, keep well, all. And we are adjourned.

14          MR. COHEN: Thank you.

15                           o0o